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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

IN RE PIMA COUNTY MENTAL HEALTH NO. MH-20000209	)	2 CA-MH 2008-0001 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Honorable Julia Connors, Court Commissioner

AFFIRMED

Barbara LaWall, Pima County Attorney
By Rutheanne Miller — Tucson
Attorneys for Appellee

Ann L. Bowerman — Tucson
Attorney for Appellant

V Á S Q U E Z, Judge.

¶1 Appellant P.B. appeals from the trial court's December 3, 2007 order entered after a commitment hearing, finding clear and convincing evidence established she is persistently or acutely disabled as a result of a mental disorder and in need of court-ordered, mental health treatment. P.B. contends her constitutional rights to liberty and privacy were violated by the treatment plan which, against her wishes, required her to "[c]omply with all

medication regimens as prescribed by treating physicians and with all other requirements of the Supervising Agency medical director or physician designee." P.B. suggests, although summarily, that the statutes authorizing the court to enter the order are unconstitutional. Additionally, she asserts the trial court erred when it ordered her committed for treatment pursuant to A.R.S. § 36-540 because it failed to consider available and appropriate alternatives, as required under subsection B of the statute. We affirm the court's order for the reasons stated below.

¶2 We will affirm an order committing a person for mental health treatment so long as it is supported by substantial evidence; we will not disturb the trial court's order unless the findings upon which the order is based are clearly erroneous. *See In re Maxwell*, 146 Ariz. 24, 29, 703 P.2d 574, 576 (1985); *see also In re Pima County Mental Health No. MH-1140-6-93*, 176 Ariz. 565, 566, 863 P.2d 284, 285 (App. 1993).

¶3 The record establishes P.B. has had a history of psychiatric difficulties since at least 2002, including court-ordered treatment and hospitalization. In November 2007, Tucson police officer Randy Dunton checked on P.B.'s welfare after she repeatedly called the Tucson Police Department and the Federal Bureau of Investigations throughout the day to report people were being harmed by remote technology. P.B. refused to go to a Tucson hospital with Dunton, fearing the harmful affects of the remote technology. After consulting personnel at the Southern Arizona Mental Health Clinic (SAMHC), Dunton determined there was a sufficient basis on which to file an Application for Involuntary Evaluation, pursuant to A.R.S. § 36-520. Psychiatrist Larry Onate, medical director of SAMHC,

evaluated P.B. and reviewed her records. As a consequence, a Petition for Court-Ordered Evaluation was filed pursuant to A.R.S. § 36-526, alleging P.B. was persistently or acutely disabled as a result of a mental disorder and was a danger to herself or others; the court issued the order that same day.

¶4 P.B. was admitted to University Physicians Hospital and evaluated by two psychiatrists. Based on their evaluations and the information contained in their affidavits, a Petition for Court-Ordered Treatment was filed. The court granted P.B.'s request for the appointment of a third, independent expert, although he neither testified at the commitment hearing in December 2007, nor was his report introduced. Following the hearing, the court concluded P.B. was persistently and acutely disabled as a result of a mental disorder and that she was in need of court-ordered mental health treatment. The court found she presently was unable or unwilling to accept treatment on a voluntary basis and ordered her to receive mental health "treatment for one year with the ability to be placed in a level one facility for a period not to exceed 180 days." Entering a treatment order in accordance with § 36-540, the court required, inter alia, that P.B. comply with all prescribed medication regimens. The order further provided that, if P.B. failed to comply with the conditions and requirements of the Behavioral Health Service Plan, she could be rehospitalized.

¶5 On appeal, P.B. contends "Arizona's statutory scheme allowing a patient like [her] to be ordered to take psychotropic medications against her will violates her right to liberty and privacy" because due process requires that, before the state can compel a person to take medication, it must demonstrate both that it has "a compelling . . . interest" and that

a "less intrusive alternative" is not available. She also contends the court failed to comply with the requirement of § 36-540(B) to order the "least restrictive alternative available" because no alternative treatment options were presented below.

¶6 P.B. did not raise these due process arguments below, nor did she challenge the constitutionality of the statutes. This court generally will not address a substantive due process claim raised for the first time on appeal, *see In re Commitment of Jaramillo*, 217 Ariz. 460, n.7, 176 P.3d 28, 33 n.7 (App. 2008), although we may do so in the exercise of our discretion, *In re MH 2007-001275*, No. 1 CA-MH 07-0023, ¶ 11, 2008 WL 926672 *3 (Ariz. Ct. App. Apr. 8, 2008). *See also In re MH 2006-000022*, 214 Ariz. 246, ¶¶ 8-10, 150 P.3d 1267, 1269 (App. 2007) (acknowledging issues not raised below generally waived but addressing procedural due process claim of lack of notice in light of fact that civil commitment proceedings result in serious deprivation of liberty and person committed must be given "appropriate due-process protection").

¶7 P.B.'s claims are blended and difficult to decipher, hampering our review. To the extent P.B. intended to raise as a separate, independent claim that the statutes are unconstitutional, as distinguished from the claim that, in this case, the court violated her due process rights, she failed to adequately develop that claim on appeal. *See* Ariz. R. Civ. App. P. 13(a)(6); *see also Carrillo v. State*, 169 Ariz. 126, 132, 817 P.2d 493, 499 (App. 1991). Moreover, she concedes that "Arizona tried to codify" precisely the kind of balance she asserts is necessary between the state's interests and those of the person whose commitment is being sought. And, she has not persuaded us the legislature failed in that attempt.

¶8 We think the gravamen of P.B.'s argument, regardless of how she characterizes it, is that, in this case, the trial court violated her due process rights by approving a treatment plan that compels her to take medication. We reject that argument as well. Section 36-540(B) requires the court to consider "all available and appropriate" treatment alternatives and order the "least restrictive treatment available." It does not require the court to consider alternatives that are unavailable or inappropriate. The record supports the trial court's implict finding that there were no alternatives to court-ordered treatment, including hospitalization, and that it was necessary to require P.B. to cooperate with the treatment plan, which included taking medications as prescribed. The evidence showed P.B. had a history of refusing to take required medication. It also established she is severely mentally ill; she suffers from psychotic disorder, delusional disorder, and schizophrenia, paranoid type. She was disruptive and aggressive at the commitment hearing, and the court admonished her that, if her outbursts did not cease, she would be removed from the courtroom.

¶9 Two physicians testified at the commitment hearing that medication is needed to address P.B.'s severe mental disabilities. Psychiatrist Christine Pletkova testified she saw P.B. frequently and believed P.B. could benefit from psychotropic medications, including medications that would help her sleep. Dr. Pletkova surmised that, without medication, P.B. would "be aggressive," and others might harm her as a result. She believed medication would help P.B.'s "delusions and her intrusiveness and impulsivity." Pletkova noted P.B. had not been taking her previously prescribed medication and had not improved at all. The

record also shows Pletkova discussed with P.B. her options, emphasizing how important it was that she take her medication. Dr. Marty Newman's testimony was consistent with that of Pletkova. He testified P.B. required antipsychotic medication and that, without it, her condition would worsen. On cross-examination, he was asked whether it was possible that treating her with medication would not be successful. Dr. Newman responded it was "highly unlikely" medication would not improve her condition.

¶10 P.B.'s suggestion that the court's order is improper merely because she is being required to take medications against her will is patently without merit and ignores the very nature of civil commitment proceedings; such proceedings involve persons who are dangerous to themselves or others or, as in this case, who are persistently or acutely disabled as a result of a mental disorder. A person who is the subject of such proceedings is either unable or unwilling to accept treatment or is incapable of making decisions about his or her own treatment.

¶11 For the reasons stated, we affirm the trial court's order committing P.B. for treatment.

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GARYE L. VÁSQUEZ, Judge

CONCURRING:

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PETER J. ECKERSTROM, Presiding Judge

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PHILIP G. ESPINOSA, Judge